

RULEMAKING 1-2-3

MISSOURI STYLE



MATT BLUNT
SECRETARY OF STATE



OFFICE OF THE SECRETARY OF STATE
STATE OF MISSOURI
JEFFERSON CITY
65101

MATT BLUNT
SECRETARY OF STATE

STATE INFORMATION CENTER
(573) 751-4936

October 11, 2001

Dear Fellow Missourians:

Missouri statutes provide that the Secretary of State shall prescribe uniform procedures for the promulgation of administrative rules (section 536.023, RSMo 2000). I am pleased to present a new and improved manual, *Rulemaking 1-2-3, Missouri Style*. This manual has been developed for the convenience of the user in the rulemaking process.

I was advised early this year that the manual had not been revised since 1996. I directed that a new and revised edition be produced, and that it reflect the comments and suggestions of the users. They participated in the process, as we sought and listened to their input and advice. The first draft was presented to a wide panel of users. These public servants who work with rules on a daily basis were a valuable resource to my office in preparing and revising the manual. I join with members of my staff in expressing our appreciation for their willingness to share their knowledge, experience, and expertise.

For your convenience, the new manual reprints Chapter 536, RSMo 2000, which establishes the rulemaking process in Missouri. Our thanks to the Joint Committee on Legislative Research, Don Prost, and his staff for permission to reprint this chapter in this manual.

As Secretary of State, I am committed to government that is open, accountable, and effective in serving the people. I have directed that my office set the highest priority on making important information accessible in a timely and convenient fashion. The rulemaking process should be accessible to the people and it should be as "user friendly" as possible. We hope you will agree that *Rulemaking 1-2-3, Missouri Style* is an improvement and that the format will assist users in preparing rules and regulations that are not only accurate, but also uniform in format and procedures.

Please contact my office if we may be of assistance to you in any phase of the rulemaking process, by e-mailing us at rules@sosmail.state.mo.us or calling the Administrative Rules Division at (573) 751-4015.

Sincerely,

Matt Blunt
Secretary of State

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Foreword

Section 536.023, RSMo 2000, charges the Office of the Secretary of State with the duty of prescribing the procedures for numbering, indexing and publishing of all rules, and notices of proposed rules and orders of rulemaking. As “publisher,” we provide the guidelines and procedures for numbering, indexing and publishing the *Code of State Regulations* and the *Missouri Register*.

To this end, we provide this rulemaking manual, *Rulemaking 1-2-3, Missouri Style*, which is designed to be a tool for the user in making the rulemaking process a less burdensome one.

The rulemaking manual has not been updated since 1996. In this revised manual, we have attempted to take a more user-friendly approach to the process. The manual has been rewritten in its entirety. We have selected a landscape presentation, and have utilized an easel-type binder for ease of use by the one who is preparing the applicable rule by enabling the user to have reference materials at their fingertips. In this manual, you will find we have utilized tabs for every type of rulemaking procedure you might encounter and have set out each and every step you must take in order to make this process easier. Additionally, we have adopted a looseleaf binder format for ease of updating and expanding the manual, as needed.

We continue to strive to better serve you in the rulemaking process. If you have questions, tips, suggestions or comments, please feel free to contact the Administrative Rules Division staff at rules@sosmail.state.mo.us—or call the Administrative Rules Division’s main number (573) 751-4015. We are here to assist you in any way we can and hope you will not hesitate to contact us.

Administrative Rules Division
Office of the Secretary of State
MATT BLUNT

Secretary of State, Administrative Rules Staff

Lynne C. Angle, Director—anglel@sosmail.state.mo.us—(573) 522-9262

Barbara McDougal, Editor **Missouri Register**—mcdoub@sosmail.state.mo.us—(573) 751-1818

James McClure, Editor **Code of State Regulations**—mccluj@sosmail.state.mo.us—(573) 751-7827

Curtis W. Treat, Associate Editor **Missouri Register**—treatc@sosmail.state.mo.us—(573) 751-2022

Sally L. Reid, Associate Editor **Code of State Regulations**—reids@sosmail.state.mo.us—(573) 522-2593

Tiffany M. Davis, Associate Editor—davistm@sosmail.state.mo.us—(517) 751-2555

Wilbur Highbarger, Computer Equipment Operator II—highbw@sosmail.state.mo.us—(573) 751-1817

Heather M. Downs, Computer Equipment Operator I—downsh@sosmail.state.mo.us—(573) 526-1259



Our Duties to State Agencies and the Public

The duties of the Administrative Rules Division of the Office of the Secretary of State are set forth in Chapter 536, RSMo 2000. Specifically, we are designated as the publisher of the *Missouri Register* and *Code of State Regulations*. Additionally, it is our privilege and responsibility to assist members of the public and state agencies in the rulemaking process. It is our hope that we can make the process as “user friendly” as possible and we stand ready to assist you in any way we can with the rulemaking process.

We offer to you this rulemaking manual as a tool designed to assist you in the rulemaking process. Additionally, we will provide to you, at no cost, rulemaking classes to train you or your staff in the proper procedural steps in the rulemaking process. We believe this class offers some tips and advice that is beneficial to all – from the seasoned user of the rulemaking process, to the new user, who is designated as the person who must prepare proposed rules.

To this end, section 536.023, RSMo 2000 specifically provides that the Office of the Secretary of State shall prescribe, in writing, the uniform procedures for the numbering, indexing, form and publication of all rules, notices of proposed rulemaking and orders of rulemaking.

Additionally, the Office of the Secretary of State establishes a form which each state agency shall use in compiling the fiscal note and affidavit required by sections 536.200, 536.205 and 536.215, RSMo 2000.

We are also given statutory authority to correct typographical errors or spelling errors in the publication of rules. See section 536.033, RSMo 2000. We always communicate with the agency involved and seek your input regarding the corrections we seek to make for publication. You may communicate with us *via* e-mail, telephone, fax, or in person, whichever you prefer. You will find our e-mail address located at the front of this manual.

The Joint Committee on Administrative Rules also has separate authority relating to rulemaking that is specifically set out in the statutes. See section 536.028, RSMo 2000.

Unfortunately, at this time, we cannot accept electronic filing of rules. During the next year, we look forward to being able to offer expanded services that are more technologically advanced and which will hopefully assist you in making the rulemaking process more efficient.

As of April 2001, as a new service to you, our customer, we are pleased to offer MasterCard/Visa as an alternative form of payment for subscriptions, copying charges, charges for certifications, etc. We hope this will be beneficial to you, our customer.

Missouri Register

The *Missouri Register* is published by the secretary of state as required by section 536.015, RSMo 2000. It is published twice each month, and organized in the format established by the secretary of state. The function of the *Missouri Register* is to encourage and solicit public participation in the rulemaking process. The *Missouri Register* is organized into the following sections:

Table of Contents—A list of agencies with rules in the current issue, and the deadline dates for filing and publication in the *Missouri Register* and the *Code of State Regulations*.

Missouri Depository Libraries—List of the locations, throughout the state, where copies of the *Missouri Register* and the *Code of State Regulations* are available.

From this Angle—Informational column written by the director of Administrative Rules.

Emergency Rules—Emergency rulemakings promulgated under the provisions of section 536.025, RSMo 2000.

Proposed Rules—Changes to rules, new rules, or rescissions are published under the provisions of section 536.021, RSMo 2000.

Orders of Rulemaking—Final versions of rules adopted, amended, rescinded, or withdrawn under the provisions of section 536.021, RSMo 2000.

In Additions—Notices required to be published in the *Missouri Register*.

Rules Under Consideration—An agency may solicit comments on subject matter pursuant to section 536.026, RSMo 2000.

Other Documents published in the *Missouri Register* include the Contractor Debarment List, Construction Transient List, Corporate Dissolutions, and Bid Openings.

Rule Changes Since Update, Emergency Rule Table, General Index—User guides which are updated each publication and are designed to assist users in finding rules that are in the process of rulemaking.

Subscriptions to the *Missouri Register* are available for \$56 per year.

Checks are made payable to the “Director of Revenue” and sent to:

Matt Blunt
Secretary of State
Administrative Rules Division
PO Box 1767
Jefferson City, MO 65102

Credit card orders (MasterCard and Visa) are accepted by calling (573) 751-4015.

Free access to the Register is available on the Internet at:

<http://www.sos.mo.gov/adrules/moreg/moreg.asp>

Missouri Code of State Regulations



The final product in the rulemaking process is the *Missouri Code of State Regulations* also referred to as the *Code of State Regulations* or simply the *Code*.

The Administrative Rules Division of the Office of the Secretary of State publishes the *Missouri Code of State Regulations*. The *Code* is currently published on paper in a fourteen (14)-volume looseleaf format and on the Internet. By statute the paper copy is currently the official copy. The *Code* is updated monthly and, although the total number of pages changes from month-to-month, it contains approximately ten thousand (10,000) pages.

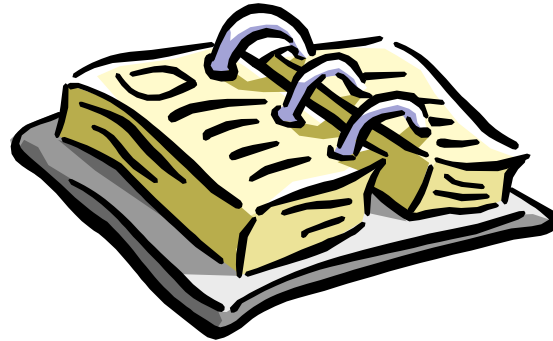
Rules, amendments and rescissions are published in the *Code* only after completing the rulemaking process. Once a final order of rulemaking has been published in the *Missouri Register* that rulemaking is updated in *Code*.

Final orders that appear in both the first of the month and middle of the month *Missouri Registers* are published in the *Code* on the last day of that same month. For example, all orders published in the March 1 and March 15 issues of the *Missouri Register* are published in the *Code of State Regulations* update on March 31. In most cases the rulemaking becomes effective thirty (30) days after it is published in the *Code* (see **Effective Dates** which follows).

The *Code* is available on the Internet at <http://www.sos.mo.gov/adrules/csr/csr.asp>. The official paper copy is available by subscription by contacting the Administrative Rules Division or at any state Depository Library.

Missouri Code of State Regulations

Effective Dates



Normal Effective Date

A normal rulemaking is effective no sooner than thirty (30) days after it is published in the *Code*. For example, in the March 31 *Code* update a rulemaking is published. That rulemaking would be effective April 30 (March 31 + 30 days = April 30). Of course, not every rulemaking follows this rule, therefore, there are a few exceptions to the rule.

Later Effective Date

An agency promulgating rules could elect to have a later effective date. For example, if an agency wants its rulemaking to be effective on July 1, when the new fiscal year starts, they may make it effective July 1 if July 1 is at least thirty (30) days after publication of the *Code* update in which the rulemaking appears. Let's say the normal thirty (30)-day effective date is May 30 for this order. Since July 1 is more than thirty (30) days after the publication date, the agency may give its rulemaking the later effective date. In this example, they could make the effective date any day after May 30, but could not make it before May 30.

Those Few Exceptions That Can Have Early Effective Dates

There are a few agencies that through constitutional or statutory exceptions may have a rulemaking become effective earlier than thirty (30) days after the rulemaking has been published in the *Code*. In all cases these are very specific exceptions for only certain types or parts of rules (see section 536.021.1, RSMo 2000). These special effective dates are acknowledged in the order of rulemaking published in the *Missouri Register*.

Missouri Code of State Regulations

Indexes

Code Indexes

The *Code of State Regulations* contains four (4) different indexes.

Changed Rule Number Index

This index gives the original rule number of the rule, the number the rule was changed to, the effective date of the change, and the *Missouri Register* citation in which the rule was changed.

General Index

This index cites rules by agency headings, topics and descriptions.

Revised Statutes of Missouri Cited or Referred to in the *Code of State Regulations*—RSMo to CSR

This index lists statutes numerically that are referred to in the *Code* and cites each rule that refers to the statute.

Revised Statutes of Missouri Cited or Referred to in the *Code of State Regulations*—CSR to RSMo

This index lists rules numerically and the statutes that are referred to in each rule. This is the reverse of the index that is referred to above.

How are rules created?

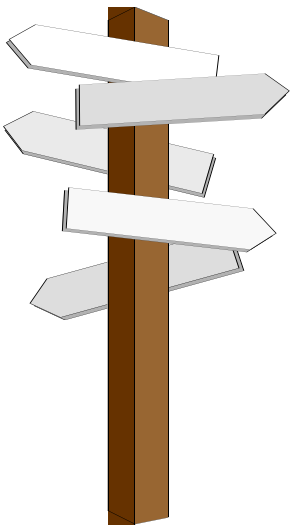
Where do rules come from?

Rules can only be written if a statute authorizes a state agency to write a rule pertaining to a particular subject. There are a few rules that are authorized by the *Missouri Constitution*, but the vast majority of rules exist by statutory authority. *So how does a state agency promulgate a rule?*



How are rules created?

1. An agency writes a rule, based on authority from specific statutes in the *Missouri Revised Statutes*. Once the rule is written by the agency, the remaining required paperwork is compiled. The agency is then ready to file the rulemaking.
2. The second step to create a rule is to file a proposed rule with the Administrative Rules Division of the Office of the Secretary of State and the Joint Committee on Administrative Rules of the General Assembly **on the same day**.
3. According to the *Missouri Register* publication schedule, the Administrative Rules Division publishes the proposed rule thirty to forty-five (30–45) days later in the *Missouri Register*. Whether the rulemaking is published at the first or the middle of each month in the *Register* is determined by the filing date of the rulemaking.
4. Following publication, there must be a public comment and/or public hearing period that extends a minimum of thirty (30) days **after** the date of publication of the proposed rulemaking in the *Missouri Register*. **The agency** must act on the rulemaking within ninety (90) days following the close of public comment, or the agency may withdraw the rulemaking at anytime.
5. Once the public comment and/or public hearing period is closed, information from the comments and/or public hearing is compiled by the agency and the agency writes the final order of rulemaking for the proposed rulemaking.
6. A copy of the final order of rulemaking for the proposed rulemaking is next **filed** by the agency **only** with the Joint Committee on Administrative Rules at the Capitol. (This is required for all agencies, except in some instances, the Department of Conservation, the Department of Elementary and Secondary Education, the Public Service Commission, and the Department of Labor and Industrial Relations.)



How are rules created?



7. The final order of rulemaking is retained by the Joint Committee on Administrative Rules for a thirty (30)-day review period. Once the thirty (30)-day review period is completed, the agency may then, and only then, file the final order of rulemaking with the Administrative Rules Division for publication in the *Missouri Register*.
8. At the end of each month, the rules that are published as final orders of rulemaking in the *Missouri Register* are prepared in final form for publication in the update to the *Code of State Regulations* by the Administrative Rules Division.
9. These rules become effective thirty (30) days after the publication date of the update to the *Code of State Regulations*. An agency, at their discretion, may choose a later date. Exceptions to these effective dates are set by statute.

10. Once a rule becomes effective, it has the force and effect of law.

11. Agencies may amend or rescind existing rules by going through the same process which is outlined in the above steps.



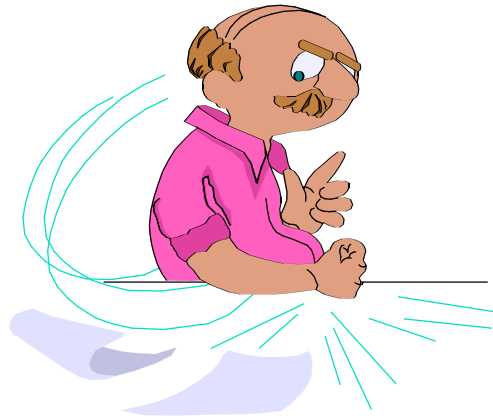
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Agency Responsibilities

Agency Rulemaking Policy

Any state agency that proposes rules must adopt rulemaking procedures (section 536.016, RSMo 2000). These procedures should determine if a rule is necessary to carry out the purposes of the statute authorizing the rulemaking. This determination should include an assessment of the effectiveness and costs of the rulemaking both to private and public person(s) or entity(ies).

This policy and procedure is an internal (within your agency) document that each agency should maintain.



Agency Responsibilities

Delegation of Authority

Just as your agency has a responsibility to adopt an internal rulemaking policy and keep the same on file within your office(s), (Chapter 536.016, RSMo 2000) you also have the responsibility to furnish our office with the proper delegation of authority, and applicable signatures, for rulemaking authority for your agency.

Please address a cover letter to the Administrative Rules Division, stating to whom authority is delegated for ***all phases*** of rulemaking within your agency. This delegation of authority will extend from the cover letter, to affidavit, fiscal note(s) and actual final orders of rulemaking for all types of rules. The letter must also contain an exact verification of signature of the person to whom authority has been delegated. It is the responsibility of our office to allow ***only those persons*** to whom this authority has been delegated to file any stage of rulemaking. This policy is for the protection of your agency, as well as the Office of the Secretary of State, Administrative Rules Division.